

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RUDOLPH E. RHABURN,

Defendant.

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Case No. 3:04cr086

and 3:09cv486

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:

JUDGE WALTER HERBERT RICE

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DECISION AND ENTRY ADOPTING INITIAL (DOC. #326) AND  
SUPPLEMENTAL (DOC. #331) REPORTS AND RECOMMENDATIONS  
OF UNITED STATES MAGISTRATE JUDGE; DEFENDANT'S  
OBJECTIONS TO SAID JUDICIAL FILINGS (DOC. #330 AND #332)  
OVERRULED; JUDGMENT TO ENTER IN FAVOR OF GOVERNMENT  
AND AGAINST DEFENDANT, DISMISSING PLAINTIFF'S MOTION TO  
VACATE, ETC., UNDER 28 U.S.C. § 2255 (DOC. #314), WITH  
PREJUDICE, UPON ITS MERITS; ANTICIPATED REQUEST FOR  
CERTIFICATE OF APPEALABILITY AND FOR LEAVE TO APPEAL *IN*  
*FORMA PAUPERIS* DENIED; TERMINATION ENTRY

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Pursuant to the reasoning and citations of authority set forth by the United States Magistrate Judge, in his Initial (Doc. #326) and Supplemental (Doc. #331) Reports and Recommendations, said Reports and Recommendations are adopted in their entirety. The Defendant's Objections to said judicial filings (Doc. #330 and #332) are overruled.

In ruling as aforesaid, this Court makes the following, non-exclusive observations:

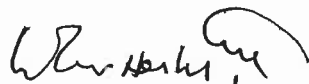
1. For whatever relevance it may have, this Court's Decision on remand, in *United States v. Alaric Simon*, 536 F.3d 542 (6<sup>th</sup> Cir. 2008), cert. denied, 129 S.Ct. 772 (2008), has been affirmed on appeal. *United States v. Alaric Simon*, 422 Fed. Appx. 489 (6<sup>th</sup> Cir. 2011).

Wherefore, based upon the aforesaid, this Court orders the entry of final judgment in favor of the Government and against Defendant herein, dismissing the Defendant's Motion to Vacate, etc., filed pursuant to 28 U.S.C. § 2255, with prejudice, upon its merits.

Given that Defendant has not made a substantial showing of the denial of a constitutional right and that reasonable jurists would not disagree with the Court's conclusion rendered herein and, further, given that any appeal from this Court's decision would be objectively frivolous, this Court denies both the requested certificate of appealability and the anticipated motion for leave to appeal *in forma pauperis*.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

September 19, 2011



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WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of record